

MORGANTOWN PLANNING COMMISSION

MINUTES

6:30 PM

January 10, 2013

Council Chambers

MEMBERS PRESENT: Peter DeMasters, Sam Loretta, Bill Petros, Carol Pyles, William Wyant, Ken Martis, Michael Shuman

MEMBERS ABSENT: Jennifer Selin, Tim Stranko

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER/ROLL CALL: DeMasters called the meeting to order at 6:30 PM.

DeMasters read the standard explanation of the how the Planning Commission conducts business and rules for public comments.

II. GENERAL PUBLIC COMMENTS: None

III. MATTERS OF BUSINESS:

A. Approval of the November 8, 2012 meeting minutes. Fletcher reworded a sentence at Pyles request. Pyles moved to approve as amended; seconded by Wyant. Motion carried 8-0, with Shuman abstaining due to his absence at the November 8, 2012 hearing.

B. Approval of December 13, 2012 meeting minutes. Due to lack of quorum of those members present at the December 13, 2012 hearing, the meeting minutes were postponed to the February agenda for approval.

IV. OLD BUSINESS: None.

V. NEW BUSINESS:

A. MNS13-01 / Veltri / Arch Street and Kingwood Street: Request by Patrick Nabors, on behalf of Joseph Veltri, for a minor subdivision approval of property between 249 Kingwood Street and 409 Arch Street; Tax Map 29, Parcels 546 and 548; R-1A, Single-Family Residential District.

Fletcher noted that the staff report submitted to the Board was incorrect and a revised report was distributed for review.

Fletcher read the Staff report and stated that the petitioner seeks to adjust the location of a portion of the side parcel boundary separating Parcels 546 and 548 of Tax Map 29 for the purpose of dedicating a parking space area currently contained within Parcel 548 to Parcel 546. Addendum A of this report illustrates the location of the subject site.

Parcel 546, addressed as 409 Arch Street, contains four (4) registered rental units spanning across Parcels 546 and 547. The area of Parcel 546 is approximately 3,283 square feet and the area of Parcel 547 is approximately 4,872 square feet.

Parcel 548, addressed as 249 Kingwood Street, contains what appears to be a single-family dwelling that does not appear to be registered as a rental unit with the City. The area of Parcel 548 is approximately 3,478 square feet.

Article 1335.03(A) provides that the minimum lot area within the R-1A District is 3,500 square feet. The following table illustrates the proposed subdivision.

Parcel	Existing Area	Proposed Change	Proposed Area
548	3,478 sq. ft.	- 133 sq. ft.	3,345 sq. ft.
546	3,283 sq. ft	+ 133 sq. ft.	3,416 sq. ft.

Article 1321.06(b) provides:

“All side lines of lots shall be at right angles to street lines and radial to curved street lines except where a variation of this rule will provide a better street and lot layout. Lots with double frontage except when paralleling major highways will be avoided.”

The proposed subdivision does not appear to meet right angle provisions provided in Article 1321.06(b). Additionally, the proposed subdivision increases the extent of nonconformity in minimum area for Parcel 548. However, the proposed subdivision reduces the extent of nonconformity in minimum area for Parcel 546.

If the Planning Commission finds that the proposed subdivision meets the exception in Article 1321.06(b) that, “...a variation of this rule will provide a better street and lot layout,” then Staff recommends that approval include a condition that the petitioner must also combine Parcels 546 and 547, which will mitigate the minimum area nonconformity of Parcel 546, the combined area for which would then be 8,155 square feet, as well as mitigate the nonconformity of the structure crossing parcel boundaries.

Fletcher referred to Addendum A of the Staff Report noting that the petitioner would like to take an area from Parcel 548, which is currently a parking space, and add to Parcel 546. The petitioner is exploring the possibility of selling one or both of the structures and wants to ensure adequate parking spaces to the larger structure with four units. If the property on Parcel 546 does go under different ownership, the parking space would then transfer with the property. Fletcher suggested that with combining Parcels 547 and 546, it would eliminate the structure crossing the Parcel boundaries and noted that Parcel 546 is small and increasing the square footage would benefit the Parcel.

Wyant asked if there were any problems with the setbacks from the sidelines as he had a hard time determining the setback from the aerial picture shown in the staff report.

Fletcher explained that although the aerial photography shown in the report is ortho-rectified, its projection is slightly different from the cadastral data, which results in a slight skew between the spatial data. Fletcher was unsure of the setbacks of the existing structures but noted that the proposed subdivision would not create a new or increase an existing encroachment.

DeMasters confirmed with Fletcher that Parcel 548 will become nonconforming by approximately 133 feet and the lot line will not be at a ninety degree angle.

DeMasters stated that Parcels 546 and 548 are currently nonconforming but if Parcels 546 and 547 are combined then one less nonconforming boundary will remain. Fletcher agreed.

Pyles asked if Parcel 548 would be nonconforming in two different ways. Fletcher explained that Parcel 548 would become nonconforming in one way with increasing the extent of the nonconforming area.

Fletcher stated that with the proposed subdivision, the larger property (Parcel 546 and 547) will retain the parking needed to accommodate the four unit structure if sold. Also, single-family structures are only required to provide two off-street parking spaces and the smaller property (Parcel 548) will meet that requirement.

Shuman asked how many parking spaces would be available for Parcels 546 and 547. Fletcher referred to the petitioner to provide the parking information.

DeMasters recognized the petitioner, Patrick Nabors, of J. R. Veltri Co., who was appearing on behalf of Joseph Veltri. Nabors stated that there are a total six units on Parcels 546 and 547. The structure with the white roof holds 2 single bedroom units and the tan roof structure holds 4 two bedroom units. Nabors reiterated the importance of adequate parking for the six units and that he has no problem in combining Parcels 546 and 547 to eliminate the nonconformities. Nabors explained that the proposed subdivision would ensure that adequate parking would be provided to future tenants.

DeMasters asked who owned the property and if they were opposed to the minor subdivision request. Nabors stated that Joseph Veltri owns the property and that Veltri feels the minor subdivision is in his best interest.

Fletcher counted the number of parking spaces to the side of Parcel 546 and estimated the total number to be nine. Nabors confirmed there are nine parking spaces available at the current time.

Nabors stated that off-street parking is a problem in the area that they are trying to avoid by providing adequate parking spaces for the occupants.

Petros asked what type of structure is on Parcel 548. Nabors stated that the building is a single-family structure.

There being no further comments or questions by the Commission, DeMasters opened the public hearing asking if anyone was present to speak in favor of or in opposition to the petition. There being no public comments, DeMasters declared the public hearing closed and asked for staff recommendations.

Fletcher stated that Staff recommends approval of MNS13-01 with the following revisions and conditions:

1. That no more than 133 square feet, as requested by the petitioner, be subdivided from Parcel 548 and same added to Parcel 546;

2. That the approved minor subdivision shall also combine Parcels 546 and 547 thereby mitigating existing nonconformities in terms of minimum area for same and that the multi-family structure crosses parcel boundaries;
3. That the petitioner submit three (3) original final plat documents, including all access/utility easements if applicable, signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
4. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the condition set forth above.

Petros asked how the house was built so close to the property line. Fletcher stated that many older historical homes were constructed that way in the past. Fletcher provided the example of a prior subdivision request that was located on Sabraton Avenue where the eve of one structure towered over the eve of another structure, with each structure being located on a separate Parcel.

Petros asked about the Planning Commission's long-term plan with conformities or if future requests should be dealt with on a case-by-case basis.

Fletcher stated that he feels the current petition allows for two non-conformities to be addressed in terms of area and the crossing of the Parcel boundaries. Although there is an increase in non-conformity for Parcel 548, it functionally and operationally serves better because there are specific parking spaces that are on the same property as the structure with six units. Fletcher mentioned that the single family structure has not been registered as a rental unit. If the structure is registered in the future, it would be limited to no more than two unrelated occupants because it is in the R-1A area and the parking would still be adequate with the proposed subdivision. Fletcher stated that situations are unique in the area and further subdivision petitions should be presented individually. He feels the proposed subdivision would operate better functionally and perform better if under separate ownership.

Martis asked if it is Commission's responsibility to confirm that the unit is registered as a rental property. Fletcher stated that the responsibility is that of the Development Services Department and arrangements had been made accordingly by speaking with the property owner's representative in which it appears to be fine and is therefore not relative.

Shuman moved to approve minor subdivision petition MNS13-01 with Staff recommended conditions; seconded by Loretta. Motion carried 8-1 with Pyles opposing.

- B. MNS13-02 / Ford / George Street:** Request by Art Ford, for a minor subdivision approval for property located on George Street; Tax Map 21, Parcel 6; R-1A, Single-Family Residential District.

Fletcher read the Staff Report stating that the petitioner seeks to subdivide Parcel 6 of Tax Map 21 by creating four (4) new parcels to construct four (4) single-family dwelling units. Parcel 6 is currently undeveloped. Addendum A of this report illustrates the location of the subject site.

Parcel 6 is approximately 18,889 square feet in area and has frontage along George Street of approximately 220 feet. The proposed subdivision will result in three (3) of the parcels having an approximate area of 4,300 square feet each and one parcel having an approximate area of

6,689 square feet. The proposed parcels exceed the minimum lot area standard of 3,500 square feet in the R-1A District.

Fletcher stated that the petitioner was not present and could not recall if the petitioner had put in a request for the Staff to represent the case. DeMasters asked Fletcher if he would like to add any additional information to the petition.

Fletcher stated that the area is a wooded lot that has existed for a long period of time and had been cleared in preparation for construction. A building permit has been issued for one of the houses. Builders were originally going to look at using the existing lot lines that were there to create 40 X 100 lots. Fletcher referred to the drawings of the plats that show an increase to the square footage by 3 feet to increase the width however the yields would remain the same. George Street is open and is bound on three sides by rights of way. George Street is the only one opened and approved, as the other alleys and streets are unopened or unapproved rights of way.

There being no questions or comments by the Commission, DeMasters opened the public hearing asking if anyone was present to speak in favor of or in opposition to the petition. There being none, DeMasters declared the public hearing closed and asked for staff recommendations.

Fletcher stated that Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents, including all access/utility easements if applicable, signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the condition set forth above.

Petros moved to approve minor subdivision petition MNS13-02 with Staff recommended conditions; seconded by Shuman. Motion carried unanimously

C. TX12-03 / Administrative / ISOD, Interstate Sign Overlay District:

Administratively requested text amendments to Article 1359 "ISOD, Interstate Sign Overlay District" as they relate to regulations for pole or pylons within the subject overlay district as well as the overlay district boundaries delineated on the City of Morgantown's Official Zoning Map.

DeMasters advised the Commission that his firm represented outdoor advertising companies and that he would have to recuse himself from the presentation and future considerations due to his conflict of interest. DeMasters exited Council Chambers and Pyles presided.

Fletcher stated that there are administratively requested text amendments to Article 1329.02 "Definition of Terms"; 1359 "ISOD, Interstate Sign Overlay District"; Table 1369.06.01 "Permitted Signs"; Table 1369.09.01 "Freestanding Sign Height Limits"; and, Article 1369.10 "Prohibited Signs and Devices" as they relate to pole or pylon signs and billboard signs as well as an administratively requested zoning map amendment to the Interstate Sign Overlay District boundaries.

Staff provided an informational presentation of the subject administratively requested text amendments during the December 13, 2012 Planning Commission hearing. As discussed

during the presentation, it appears that the Morgantown community sought to significantly restrict the development of billboards or off-premise pole or pylon signs under the major zoning ordinance amendment enacted in January 2006. In doing so, an overlay district was created in proximity to federal interstate rights-of-ways within which these types of signs are permitted. Article 1359 establishes the ISOD, Interstate Sign Overlay District and the official zoning map illustrates the boundaries for same.

In reviewing the zoning ordinance text and zoning map, there is a conflict between how the overlay district's boundary is described and how it is illustrated. Specifically, Article 1359 describes the overlay district boundaries as to within 500 feet of a federal interstate right-of-way. However, the official zoning map illustrates the ISOD Overlay District boundary to, what appears to be, 500 feet from the I-68 centerline. The resultant overlay district as illustrated on the zoning map is contained entirely within the I-68 right-of-way. The West Virginia Division of Highways (WVDOH) does not permit signs to be erected within a right-of-way for which it controls and maintains.

Article 1329.01(D) "Rules of Construction, Intent, and Usage" provides that, "In case of conflict between regulations the more restrictive shall apply."

In this case, the official zoning map is more restrictive but results in an area where these types of sign may not be erected due to WVDOH restrictions. As such, the City of Morgantown inadvertently enacted restrictions that make the development of these types of signs impossible.

The City Attorney maintains that, in West Virginia, all land use types must be permitted somewhere within a community that has enacted land use and land development regulations. On this basis, the City of Morgantown must therefore identify an acceptable area for billboards and off-premise pole or pylon signs to be permitted.

ANALYSIS:

Addendum B of this report presents Staff recommended revisions. The purposes of the subject administratively requested text and map amendments are to:

- To avoid unnecessary and costly litigation;
- To recognize and provide for "billboards" in the zoning ordinance; and,
- To recognize and provide for digital technologies and reasonable restrictions.

Fletcher stated that there is also an Addendum A which pertains to Article 1359 as it is currently and serves as more of a resource.

The following summarizes the revisions provided in Addendum B.

1. Official Zoning Map. Staff recommends that the ISOD, Interstate Sign Overlay District boundaries be removed from the Official Zoning Map so that the geography of the overlay district is simply described in Article 1359.

Because the only documentation currently held by the WVDOH that describes or illustrates the I-68 right-of-way are surveys from the early 1970s, removing the overlay district from the zoning map places the determination or burden of proof concerning the location of the federal interstate right-of-way and the proximity of a proposed billboard or off-premise sign on the developer

seeking to erect the sign. Additionally, describing the boundary and not illustrating it provides flexibility for future annexations that may include areas adjoining a federal interstate without having to amend the zoning map accordingly.

Fletcher stated that he is not currently aware of any annexation efforts rather a suggestion when thinking about removal from the zoning map.

2. Article 1329.02 "Definition of Terms". Staff recommends that the term "Billboard Sign" be included in the definitions section and that the current geography description provided in the definition for "Pole Sign" be removed.
3. Article 1359 "ISOD, Interstate Sign Overlay District". Staff recommends that Article 1359 be struck entirely and replaced as presented in Addendum B of this report. Recommended revisions provide necessary geographical context in the absence of the overlay district being illustrated on the zoning map as well as provide standards for electronic and/or digital billboards that are becoming more of an industry standard.
4. Table 1369.06.01 "Permitted Signs". Staff recommends that "Billboard Sign" be added to the table that identifies where said signs are permitted.
5. Table 1369.09.01 "Freestanding Sign Height Limits". Staff recommends that "Billboard" type signs be added to the table that identifies height restrictions as off-premise signs are currently provided.
6. Table 1369.10 "Prohibited Signs and Devices". Staff recommends that "Billboard" type signs be added to the list of prohibited signs as off-premise signs are currently provided.

Fletcher explained that it appears that great efforts were taken in the 2006 Major Zoning Ordinance Amendment to avoid using the word "billboard". For items 2, 4, 5, and 6 the new term "Billboard" was introduced and therefore the word must be defined and then would be folded into the tables.

Fletcher stated that the purpose was to avoid unnecessary costly litigation and there is an obligation that when a restriction is created, then it could be applied anywhere within the City. In West Virginia, any type of land use needs to have a home in a community. Billboards were permitted at one time in the City, and there are some currently around.

Shuman asked for clarification on number six. Fletcher stated that Article 1369.10 identifies signs that are prohibited within the City. A billboard is an off-premise sign and therefore would not be allowed within the City except where stated within the section of the article such as the overlay district.

Fletcher stated that the City's boundaries extend beyond Interstate 68 in Sabraton along Route 7 and along Route 119 near the Wal-Mart off 4-H Camp Road. The challenge is that there are two rights-of-way that intersect with Interstate 68 and existing long before Interstate 68 was developed. The proposed revisions places the burden of proof on establishing the location of the federal interstate right-of-way and the 500 foot buffer within which a billboard sign could be developed on private property. With the proposed revisions, there may be one or two potential billboard sign locations to the north Interstate 68 along Route 7. There are only a couple of privately-owned properties south of Interstate 68 along Route 7, but they are classified as R-1 and therefore would not be an area within which a billboard sign could be developed.

Additionally, there may be additional federal and state scenic by-way restrictions along Route 7 to the south of Interstate 68.

Petros asked if the height of a billboard is determined by the Board of Zoning Appeals. Fletcher confirmed that the height would be determined by the Board of Zoning Appeals as it currently is now.

There being no further comments or questions by the Commission, Pyles opened up the public hearing asking if anyone was present to speak in favor of or in opposition to the petition. There being none, Pyles declared the public hearing closed and asked for staff recommendations.

Fletcher stated that the Planning Division advises the Planning Commission to forward a favorable recommendation to City Council to enact the Planning and Zoning Code amendments as presented in Addendum B hereto attached.

Loretta moved to approve text amendment petition TX12-03 as recommended by Staff; seconded by Petros. Motion carried 7-1 with Shuman opposing.

DeMasters returned to Council Chambers to preside the meeting.

VI. OTHER BUSINESS:

A. Committee Reports

- Traffic Commission:

Wyant stated that the Traffic Commission is reviewing the MPO's Long Range Transportation Plan and identifying the Traffic Commission's role in plan implementation. Wyant also noted that the Traffic Commission is reviewing how it can encourage West Virginia Division of Highways to study the feasibility of changing the Route 7 designation from following Earl Core Road to following Greenbag Road. Fletcher noted that he understands this relates to rerouting heavy truck traffic.

- Green Team: No report

B. Staff Comments

Fletcher reminded the Commission that the Comprehensive Plan Public Open House was scheduled for Monday, January 14, 2013 from 7PM to 9PM in the Morgantown Public Library. Fletcher explained the format in which the Comprehensive Plan Open House will be presented; that the document and exhibit will remain at the Library until Friday, January 25, 2013 for public review and comment; the document will be posted on the City's website; and, comments concerning the draft will be taking through Monday, January 28, 2013.

VII. FOR THE GOOD OF THE COMMISSION:

DeMasters noted that Commissioner Stranko had requested that the WVDOH District Engineer attend an upcoming Planning Commission meeting to provide an overview of current and future transportation issues and priorities. The Commission decided to invite the MPO Director and a representative from the DOH, to attend the Planning Commission meeting on February 14th, 2013, to discuss the long range transportation plan.

VIII. ADJOURNMENT: 7:45 PM

MINUTES APPROVED:

February 14, 2013

COMMISSION SECRETARY:


Christopher M. Fletcher, AICP